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By electronic delivery

December 23, 2010

Ms. Jennifer J. Johnson  
Secretary, Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Re: Docket No. R-1390

Dear Ms. Johnson:

This comment letter is submitted by HSBC Bank Nevada, National Association ("HSBC") in response to the proposed amendment to Regulation Z ("Proposed Rule") issued by the Board of Governors of the Federal Reserve System ("Board"). The Proposed Rule represents significant change in regulation of debt cancellation contracts, debt suspension agreements, and credit insurance programs.

HSBC is part of HSBC North America Holdings Inc., one of the ten largest bank holding companies in the United States. HSBC – North America comprises businesses with assets totaling \$391 billion at December 31, 2009. The company's businesses serve customers in the following key areas: personal financial services, credit cards, specialty insurance products, commercial banking, private banking, and global banking and markets.

HSBC offers debt cancellation contracts and debt suspension agreements in connection with credit card accounts ("Card Protection Programs"). HSBC fully supports the Board's efforts to enhance consumer understanding of Card Protection Programs. Because these programs are an additional benefit available to HSBC's cardholders, we want our cardholders to understand the features of these programs and to be satisfied with their optional enrollment should they choose to enroll.

HSBC appreciates the opportunity to provide these comments to the Proposed Rule.

## **I. Introduction**

The Proposed Rule was initially published as a proposal specific to Home Equity Lines of Credit (HELOC) loans ("Initial HELOC Proposal")<sup>1</sup>, and remains largely focused on HELOC lending. Perhaps a result of this, the Proposed Rule's somewhat surprising and abrupt applicability to Card Protection Programs may reflect a lack of appreciation of the unique nature of Card Protection Programs, their features, and the existing federal disclosure standards governing Card Protection Programs.

Certainly, conducting consumer surveys is one sensible approach to determining effectiveness and understandability of Card Protection Program disclosures. However, the survey serving as foundation for the Proposed Rule disclosures was narrowly focused on credit life insurance. Because the features of Card Protection Programs differ greatly from credit life insurance, HSBC recommends that the Board conduct more targeted consumer testing focused specifically on Card Protection Programs. The testing should balance discussion of both the benefits and the risks associated with these programs, to ensure that consumers are enabled to make informed decisions.

If consumer testing of Card Protection Programs reveals specific areas of consumer misunderstanding, the Board should consider existing federal disclosures for these programs, and work in cooperative manner to refine and improve those disclosures. However, the Proposed Rule does not contemplate existing federal disclosure standards applicable to Card Protection Programs, and proposes sometimes duplicative disclosures, to be provided in different form from existing federal disclosures.

Finally, any new disclosures for Card Protection Programs should consider the impact to credit card operations, and consequential impact to consumers who desire to enroll. The Board should not establish disclosure requirements which a card issuer cannot reasonably meet, even when it desires to. Yet, the Proposed Rule contains an employment eligibility disclosure, which would require card issuers to gather detailed information from consumers which is not needed to approve or manage the credit card account, and is therefore not collected on the application. The Proposed Rule also contains an individualized cost disclosure, which could not be made on most credit card applications, when the credit line has not been determined. Finally, the Proposed Rule would add complexity to private label programs, where a retail merchant employee interacts with an applicant, and would be responsible to create and deliver accurate individualized disclosures, and gather multiple documents on behalf of the card issuing bank.

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<sup>1</sup> 74 FR 43232, Aug. 26, 2009

## II. Consumer Survey

The Board utilized a contractor, ICF Macro, to conduct all consumer testing which served as foundation for the Proposed Rule. Upon completion of the consumer testing, ICF Macro provided the Board with a summary of its findings ("ICF Macro Report").<sup>2</sup> While we observe that ICF Macro's findings are entirely unrelated to Card Protection Programs, we would like to additionally comment on the participation and methodology of the survey.

**A. Because ICF Macro surveyed too few consumers, who also possessed unusual demographical traits, it is difficult to draw meaningful conclusions from ICF Macro survey.**

The ICF Macro Report contends that cognitive research involving a mere 18 consumers supported the development of disclosures under the Proposed Rule.<sup>3</sup> Specifically, ten consumer interviews were conducted using initial disclosure content in March 2010, and a final 8 consumer interviews were conducted using revised disclosure content in April 2010. While survey participants were recruited using a screening process intended to ensure the selection of a range of participants of different gender, age, ethnicity, and other characteristics,<sup>4</sup> none of the final 8 interviewed consumers had experienced any financial hardship in the past 7 years.<sup>5</sup>

It would stand to reason that those who had experienced financial hardship would offer helpful perspective in development of meaningful disclosures for Card Protection Programs - which provide benefits in event of financial hardship. To that end, we believe that such substantial change to consumer disclosure must be based on the input of a statistically significant representation of consumers, and must include the perspective of consumers with personal experience pertinent to the topical matter related to the disclosures.

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<sup>2</sup> Summary of Findings, Design and Testing of Periodic Statements for Home Equity Lines of Credit, Disclosures About Changes to Home Equity Lines of Credit Limits, and Disclosures About Credit Protection Products, July 2010

<sup>3</sup> While ICF Macro had surveyed additional consumers prior to the Initial HELOC Proposal, there is no indication those findings supported the Proposed Rule. In fact, prior testing revealed favorable consumer opinion of credit insurance. For example, the prior 2009 ICF Macro Report determined "*Almost all interview participants understood from their reading of this section of the form that credit life insurance is not required...several participants commented that credit life insurance sounded like an important loan feature and indicated they would want to enroll.*" (emphasis added) However, the Board essentially discarded those findings, "concerned that [the tested disclosures] did not make consumers aware that they might not qualify for the product's benefits. Therefore, the decision was made to add language to alert consumers that they might not be eligible for benefits from the insurance."

<sup>4</sup> Page 6, ICF Macro report

<sup>5</sup> Page 37, ICF Macro report, *Appendix C Participant Demographic and background Information.*



## **B. Survey Methodology**

It is significant that ICF Macro did not conduct any survey of Card Protection Programs, focusing instead on developing disclosures pertinent to a credit life insurance product. The survey appeared to place inordinate emphasis on risks associated with credit insurance, and provided increasingly alarming disclosures to the participants, until such time as all participants believed they would not benefit from the program.

This survey approach seems inconsistent with policy guidance provided by the Board's Division of Research and Statistics, which released a study in 2002 providing an analysis of credit insurance.<sup>6</sup> That study found that the vast majority of consumers who purchased the credit insurance had a favorable attitude toward the credit insurance. The study recommended that the Board consider the views of the users of these products when making policy:

"With respect to credit insurance, because the views of users and nonusers seem so divergent, it seems important that the views of users be given sufficient weight in considering public policies in this area. According to the views expressed by many users of credit insurance, eliminating this product by regulation could be disadvantageous to them."<sup>7</sup>

However, there is no indication that the ICF Macro Survey recognized the appeal and value that Card Protection Programs clearly offer many customers.

Because this study inordinately emphasizes the potential hazards of credit insurance, the disclosures that resulted from this study have the potential to simply eliminate credit card protection products by stressing potential negative aspects and frightening consumers. Rather than meaningfully communicating risks to those who need the information, the disclosures would dissuade all consumers from making an informed purchasing decision, including those who are eligible for, and might benefit from, program features and benefits.

### **i. The ICF Macro Report indicated no intent to conduct a survey pertinent to Card Protection Programs.**

While the Proposed Rule suggests new disclosure standards for debt cancellation contracts and debt suspension agreements, HSBC notes that the ICF Macro Report indicates ICF Macro was engaged by the Board to conduct consumer testing of "disclosures related to credit insurance for HELOCs and

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<sup>6</sup> "Consumers and Credit Disclosures: Credit Cards and Credit Insurance," Thomas A. Durkin, Federal Reserve Bulletin, April 2002.

<sup>7</sup> Durkin paper at 213.



closed-end mortgages.”<sup>8</sup> Presumably, the Board instructed ICF Macro about HELOC credit insurance programs, and ICF Macro then performed a survey to address specific Board-indicated concerns with such programs. The ICF Macro does not indicate any awareness of, or findings pertinent to, Card Protection Programs.

**ii. The ICF Macro Report does not adequately describe the interaction with survey participants.**

According to the ICF Macro Report “Participants were given a disclosure and asked to ‘think aloud’ while they reviewed the document, indicating whenever they found something surprising, interesting, or confusing. Following this ‘think aloud’ process, participants were asked specific questions about the information on the disclosure to determine how well they could find and interpret the content.”<sup>9</sup> The ICF Macro Report indicates use of a “survey guide,” without further description.

While the ICF Macro Report indicates that individual participant surveys took approximately 75 minutes,<sup>10</sup> there is no detail whatsoever about the content of the survey guide, the specific questions or scenarios posed to survey participants, or any additional program detail provided which might have helped survey participants to balance the benefits and risks associated with programs for which disclosures were being surveyed. Without this information, there is a general lack of transparency about the participant surveys as a whole, and the conclusions, if any, that might reasonably be drawn from survey findings.

Of specific concern, ICF Macro’s findings indicate that the survey leaders apparently stressed the risks of the program to survey participants, because participants stated atypical concerns well beyond the information contained in the disclosures being tested. For example, the ICF Macro Report indicated the following findings as to each round of the testing:

- *In participants’ initial reading of the disclosure, eight of the 10 participants commented on the fact that they might not receive benefits even after purchasing the product **and making payments for a number of years**. In most cases, participants were surprised by this and indicated that it made them less likely to purchase the insurance.[emphasis added]*<sup>11</sup>

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<sup>8</sup> Executive Summary Page i, ICF Macro Report

<sup>9</sup> Executive summary Page ii, ICF Macro Report

<sup>10</sup> Executive Summary Page ii, ICF Macro Report

<sup>11</sup> Page 14, ICF Macro report [March 2010 Phoenix survey]

- *After reading the disclosure, five participants expressed surprise that they might not receive benefits even after purchasing the product and making payments for a number of years.[emphasis added]*<sup>12</sup>

While the ICF Macro Report does not give details of these discussions, it appears that the survey participants may have misunderstood this scenario to be a typical occurrence. Conceivably, all 18 participants might have been eligible for program benefits, but left with an understanding that there is a significant risk they would not be eligible.

Based on the appearance that the survey leaders emphasized atypical program risks, it is natural to wonder what other information the survey leaders communicated to survey participants. Of greater significance, it appears that survey participants were not provided information needed to fully understand the risk described by ICF Macro. For example, there is no indication that specific ineligibility scenarios were discussed, or the materiality of those exclusions. Without this information, one could only speculate what disclosures would deliver meaningful information to consumers. Potentially, the development of a bold, underlined disclosure (stating **"You may not receive any benefits even if you buy this product"**) resulted from the participants' misunderstanding of the frequency and materiality of eligibility risks suggested by survey administrators.

### iii. **Comprehension of the wording of warning labels alone may not help consumers make informed buying decisions.**

As ICF Macro described its approach to consumer testing, "[data] were collected on which elements and features of each disclosure were most successful in communicating information clearly and effectively."<sup>13</sup> Following the first round of consumer testing in March 2010, ICF Macro concluded that "[w]hile comprehension of most information on the notice was fairly high" the Board added content and revised the structure of disclosures into a tabular format. Following the second round of consumer testing in April 2010, ICF Macro indicated the following finding:

- Findings from this round showed that comprehension of the disclosure was high when the information was presented in tabular question-and-answer format.<sup>14</sup>

It appears that ICF Macro believes that "comprehension" is based on merely understanding the words of warning language, as opposed to an informed understanding of the concepts, ideas, and meaning of the words, leading to an informed decision on the benefits and risks described in the disclosure.

<sup>12</sup> Page 16, ICF Macro Report [April 2010 Memphis survey]

<sup>13</sup> Executive Summary page I, ICF Macro Report

<sup>14</sup> ICF Macro Report, page 16

As a result of its survey, ICF Macro determined the following disclosures to be provided to consumers who consider enrolling:

1. A bolded and capitalized “**STOP**” warning at the outset of program disclosures.
2. A statement that the consumer “may not need” the coverage.
3. A statement that “Other types of insurance can give you similar benefits and are often less expensive.”
4. A bolded, underlined, “**You may not receive any benefits even if you buy this product**” disclosure.

HSBC does not doubt that the wording and display of these warnings may be readily comprehended, but wonders whether general warnings, devoid of specific terms, can reasonably be expected to lead to an informed purchasing decision. Nevertheless, ICF Macro’s summary declares “[t]hese model forms were developed, in large part, based on consumer testing described in this report. Consumer testing results indicate that the revised forms communicate important information in a clear and effective way, *which should enable consumers to comprehend complex information and make informed financial decisions.*” [emphasis added]<sup>15</sup>

Supporting HSBC’s concern that new disclosures will serve as sole basis for an informed purchase decision, ICF Macro in fact asked each survey participant to make a purchase decision after reading tested disclosures, with the following result:

*“All participants indicated that based on what they had read in the disclosure, they would not purchase credit life insurance.”<sup>16</sup>*

HSBC questions whether the survey approach resulted in meaningful disclosures which enable informed purchasing decisions. Equally likely, the results show that consumers who might be qualified for benefits, and to whom the program might appeal, made a purchasing decision misunderstanding the actual likelihood and significance of program restrictions.

As the Board itself notes within its Proposed Rule, “[o]ne of the purposes of TILA is to provide *meaningful* disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the *uninformed* use of credit.”[emphasis added]<sup>17</sup> HSBC asks the Board to consider

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<sup>15</sup> ICF Macro Report, page 17

<sup>16</sup> ICF Macro Report, page 16

<sup>17</sup> 75 FR 58539



whether it is necessary or appropriate to alarm all consumers without actually communicating risks meaningfully to those who need the information. HSBC believes that a more focused survey of Card Protection Programs would allow for determination of specific consumer confusion, and deliver necessary information in a way that does not deter all those who the disclosure was not intended for.

### **III. Card Protection Programs should be excluded from coverage under the Proposed Rule.**

HSBC believes there are several other reasons the Board should reconsider its decision to include Card Protection Programs within HELOC rulemaking. First, the Board's stated motivation in proposing the Initial HELOC Proposal concerned topics unrelated to Card Protection Programs. Second, there already exists a federal standard for the disclosure of Card Protection Programs, which would cause duplicative disclosures. Third, a government study on Card Protection Programs is underway, which may provide findings that cause the Board to reconsider risks associated with Card Protection Programs, and which may suggest solutions as to identified areas of concern.

#### **A. The Board's stated motivation for the Proposed Rule involves topics unrelated to Card Protection Programs.**

The Proposed Rule explains that the Board is proposing new disclosures "because there have long been concerns about the merits of these products."<sup>18</sup> In support of this statement, the Board cites a 1998 report it jointly conducted with the Department of Housing and Urban Affairs.<sup>19</sup> That report cites three concerns related to credit insurance sales: (1) "high-pressure" sales tactics; (2) single-premium products; and (3) the need for consumers to have a right to cancel the insurance during the life of the loan. However, the Board has indicated no finding whatsoever that Credit Card Programs are offered using high pressure sales tactics. HSBC is unaware of any Credit Card Program offered as single-premium programs or without consumer cancellation rights.

#### **B. The Proposed Rule would create duplicative and sometimes contradictory federal disclosure standards for Credit Card Programs.**

Other recent Board rulemaking processes recognized that Card Protection Programs are already subject to the disclosure requirements issued by the Office

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<sup>18</sup> Proposed Rule, Docket No. R-1390 at 58559.

<sup>19</sup> Bd. of Governors of the Fed. Reserve Sys. and U.S. Dep't of Hous. and Urban Dev., *Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act* at 64-66 (1998).

of the Comptroller of the Currency ("OCC Rule"). These previous Board rulemakings sought consistency in disclosures, essentially mirroring the types of consumer protections established under the OCC Rule.

For example, within proposed amendments to Regulation Z in June 2007, published as a final rule in January 2009<sup>20</sup>, each of the proposed and final rule clearly indicated as follows:

"[C]reditors offering open-end (not home-secured) plans would be provided with flexibility in evidencing consumers' requests for optional insurance or debt cancellation or suspension coverage, consistent with rules published by federal banking agencies to implement Section 305 of the Gramm-Leach-Bliley Act regarding the sale of insurance products by depository institutions and guidance published by the Office of the Comptroller of the Currency (OCC) regarding the sale of debt cancellation and suspension products. See 12 CFR part 37 regarding debt cancellation and debt suspension products."<sup>21</sup>

Curiously, however, there is no reference to, or recognition of, the OCC Rule within the Board's new Proposed Rule. In fact, within its Regulatory Flexibility Act analysis, the Proposed Rule provides the following:

*"E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules.*

*Other Federal Rules.*

*The Board has not identified any Federal rules that conflict with the proposed revisions to Regulation Z."*<sup>22</sup>

Because the Proposed Rule does not include any analysis of how the new proposals would interplay with other federal disclosure requirements, it is unclear what, if any, consideration the Board gave to the existing federal disclosure standards promulgated under the OCC Rule.

The OCC Rule intended to "provide for standardized disclosures of key information in connection with the offer and sale" of debt cancellation contracts and debt suspension agreements. The OCC noted that its disclosure requirements were "structured to accommodate widely used methods of marketing DCCs and DSAs [debt cancellation contracts and debt suspension

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<sup>20</sup> 72 FR 32965, 74 FR 5265

<sup>21</sup> Within each of the Board's 2007 proposal and 2009 final rule, "Taken together, the proposed revisions would provide consistency in how creditors deliver, and consumers receive, information about the cost and optional nature of similar products."

<sup>22</sup> 75 FR 58687



agreements], including telephone solicitations, mail inserts, and so-called 'take one' applications."<sup>23</sup> The requirements would enable banks to harmonize their policies, procedures, and employee training programs across the two product lines.

The OCC sought a disclosure framework which would ensure that consumers are able to make informed decisions concerning their purchase of these programs. As noted within the OCC's supplementary information:

*"The rule requires that disclosures and acknowledgments and affirmative elections be presented in a form that is simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. Disclosures must also be meaningful, and the rule gives examples of methods—such as spacing and type styles—that may be used to satisfy that standard."*<sup>24</sup>

Under those rules, national banks are required to provide disclosures using model form disclosures.<sup>25</sup>

If promulgated, the Proposed Rules would result in conflicting and often duplicative federal disclosure requirements. The most significant impact of duplicative disclosures would be marketing conducted through telemarketing, because the proposed disclosures would be expected to double the length of orally-delivered disclosure. Such a result would undermine the OCC's stated intent to accommodate telephone sales. The new disclosure requirements would also make written solicitations more cumbersome, lengthy, and potentially confusing. It is not clear how a national bank could adhere to the competing federal model disclosure requirements within written solicitations.

HSBC strongly recommends that the Board reconsider its proposal to apply the disclosure requirements to national banks which are already required to provide consumer disclosures under 12 CFR Part 37. Alternatively, if the Board were to conduct additional consumer testing which evidenced a need for enhanced disclosures, the Board should work collaboratively with the OCC in establishing uniform disclosure standards. Without coordination among regulatory agencies, each independent banking agency's efforts to require short and clear disclosures to consumers would result in voluminous, inconsistent and duplicative disclosures to consumers.

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<sup>23</sup> 67 FR 58963

<sup>24</sup> 67 FR 58972

<sup>25</sup> OCC supplementary information within its final rule published as 67 FR 58962 indicates "Banks that make disclosures in a form substantially similar to the forms provided in the rule will be deemed to satisfy the disclosure requirements. These particular forms are not mandatory, however, and a bank may elect to use different wording or a different format, as long as the approach chosen satisfies the substance of the applicable requirements."



**C. A Government Accountability Office report will shortly be provided to Congress, providing a thorough analysis of Card Protection Programs.**

As required by a provision of the CARD Act, “a study on the terms, conditions, marketing, and value to consumers of” Card Protection Programs is being conducted by the Government Accountability Office (GAO) and will be reported to Congress in early 2011.<sup>26</sup> The GAO report is expected to provide findings based upon thorough review of Card Protection Programs, along with a review of topics of concern specified by the Board within the Initial HELOC Proposal and the Proposed Rule.

The Board should clearly not adopt substantial new disclosure proposals applicable to Card Protection Programs, based upon limited ICF Macro consumer testing specific to HELOC insurance programs, when a significant governmental study on Card Protection Programs is underway. Because the GAO study may address matters relating to the Board’s concerns, or contain suggestions relating to other concerns pertinent to the Proposed Rule, the Board should defer action on the Proposed Rule until after the GAO report is published.

**D. The Proposed Rule seeks protections without contemplating factors unique to Card Protection Programs.**

As the Board noted recently, Card Protection Programs offer a variety of coverage types not offered by typical credit insurance programs.<sup>27</sup> These include hospitalization, call to active military duty,<sup>28</sup> marriage, the birth of a child, divorce, natural disaster, business interruption, and family leave. Also, retail private label Card Protection Programs may provide unique protection against theft of or damage to merchandise purchased at the retailer.

These features are not typically available through either credit insurance or traditional insurance products. However, the Proposed Rule would require a disclosure stating that consumers should consider their other insurance, along with a statement that “you may not need this product.” Further, a card issuer would be required to disclose that “[o]ther types of insurance can give you similar benefits, and are often less expensive.” It would be inaccurate, and therefore highly confusing, for Credit Protection Program disclosures to state that other insurance may eliminate the need for the program, or that it is less expensive.

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<sup>26</sup> CARD Act of 2009, Section 509 Section.

<sup>27</sup> 72 FR 32965, as noted by the Board “In a second development, creditors have been selling debt suspension coverage for events other than loss of life, health, or income, such as a wedding, a divorce, the birth of child, a medical emergency, and military deployment.”

<sup>28</sup> These benefits go beyond benefits received pursuant to Servicemember Civil Relief Act.

Additionally, Card Protection Programs, including those offered by HSBC, commonly provide program benefits if a covered event occurs with respect to the cardholder's spouse. Spousal benefits are typically not included in credit insurance programs. Indeed, the parts of the Proposed Rule relating to cardholder eligibility neglect to take into consideration the possibility that even though the cardholder may not be eligible for a certain covered event (such as unemployment) the cardholder's spouse may be eligible for those covered events. The Proposed Rule's requirement to predetermine a cardholder's own employment eligibility<sup>29</sup> might preclude certain cardholders from obtaining card protection, even though they may in fact be eligible to receive unemployment benefits, and may desire to obtain unique protection against the unemployment of spouse.

The Board should consider the unique aspects of Card Protection Programs in reviewing the Proposed Rule. Because Card Protection Products differ significantly from credit insurance, some of the proposed disclosures inaccurately describe the program alternatives, and consequently impede the ability of consumers to make voluntary choices about program features or benefits they may elect.

#### **IV. Other HSBC Comments**

**A. Proposed eligibility disclosures would restrict a credit card issuer from offering enrollment at time of application, and would create duplicative federal disclosures.**

The proposed requirement to ascertain and disclose that the consumer "meets the age and employment eligibility requirements" would cause significant practical and operational problems for credit card issuers. This requirement would greatly restrict when the programs may be offered, and would require card issuers to obtain information from cardholders that is not requested on a credit application for card lending needs. These requirements would impose burdensome operational processes on card issuers without significant benefit to consumers. In addition, other federal law already requires disclosure emphasizing the fact that restrictions, limitations and conditions may prevent a cardholder from receiving program benefits.

Most credit card applications result from direct prescreened mail solicitations, internet applications or invitations to apply at a retail merchant location. Because the employment status of an applicant is unknown by the credit card issuer, any requirement to predetermine employment eligibility would effectively prohibit card issuers from offering Card Protection Programs at the

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<sup>29</sup> Proposed 226.4(d)(1)(D)(5) requires a disclosure "statement that the consumer meets the age and eligibility requirements..."



time of credit application, a time when a card applicant is most focused on making informed decisions relating to the establishment of the account.

In addition to being prohibited from offering a Card Protection Program at time of application, a card issuer may remain unable to predetermine employment eligibility information after a credit application has been received. While most credit card applications do ask whether the applicant is employed, the application may not require detail as to employment to decide a credit card application. As such, in order to ever be capable of offering a Card Protection Program, a card issuer would need to find other means to obtain detailed employment information.

Potentially, a card issuer would need to lengthen its credit card application to include these types of data requests, even though they are unnecessary for a credit decision. Lengthening the application, however, is not a good solution. A card applicant may be confused by request for detailed employment information, and may decide not to apply for a credit card if under the impression that detailed employment information has a bearing on the credit decision. Additionally, lengthened applications would lengthen telephone applications, and could be frustrating for merchants who maintain private label credit card programs, because the consumer's decision not to apply for credit as a result of these factors impact the consumer's decision to purchase the merchant's retail goods.

Finally, HSBC notes that credit card issuers are currently required to provide an eligibility disclosure under the OCC Rule. That disclosure informs consumers that the Card Protection Program has eligibility restrictions.

- *Eligibility requirements, conditions, and exclusions*

*There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [PRODUCT NAME]. [Either]: (1) The following is a summary of the eligibility requirements, conditions, and exclusions. [The bank provides a summary of any eligibility requirements, conditions, and exclusions]; or (2) You may find a complete explanation of the eligibility requirements, conditions, and exclusions in paragraphs \_\_ of the [PRODUCT NAME] agreement.*

HSBC believes this OCC Rule discloses meaningful information to consumers, and it urges the Board to reconsider its proposal of a duplicative federal disclosure pertinent to Card Protection Program eligibility.

If the Board seeks to provide more meaningful information to those who do not understand the nature of unemployment benefits, HSBC proposes that the Board test a disclosure such as "This program will only provide unemployment



benefits following unanticipated event of unemployment which occurs after enrollment. If you are already unemployed, or have temporary employment scheduled to end as of a known date, this coverage may<sup>30</sup> not be right for you." Such a disclosure would provide more targeted information to those unfamiliar with the nature of these programs, without burdening card issuers with predetermining eligibility, or exaggerating the risk of ineligibility to those who already understand the nature of these programs.

**B. Proposed cost disclosures would impede the offering of Card Protection Programs at time of application, while providing little consumer benefit.**

Section 226.4(d)(i)(D)(3) of the Proposed Rule would require a creditor to provide at time of enrollment a statement of "the maximum premium or charge per period, together with a statement that the cost depends on the consumer's balance or interest rate, as applicable." Supplementary information contained within the Proposed Rule provides that for open-end loan types "the creditor must base the disclosure on the maximum outstanding balance or periodic principal and interest payment possible under the loan contract or line of credit plan." These cost disclosures would be difficult to implement and likely to confuse credit card holders. In addition, they offer little benefit to consumers.

The requirement to provide an individualized "maximum cost" disclosure would make it difficult, if not impossible, for card issuers to offer Card Protection Programs at the time of application. Because the amount of credit that may be extended is based on the applicant's creditworthiness and income, the maximum credit to be extended under the credit plan would not be known until after a credit application has been submitted and reviewed. Without knowing the maximum credit, card issuers could not disclose a maximum cost as proposed.

HSBC respectfully suggests that the proposed cost disclosures be removed. Indeed, other cost disclosure mechanisms provide adequate cost information to cardholders in order to allow them to evaluate Card Protection Programs. Within the past year, the Board promulgated billing statement disclosures for Card Protection Programs which provide ongoing, individualized cost disclosures to consumers. Its final rule provided:

*"The fee for the credit insurance or debt cancellation or debt suspension coverage will also appear on the first monthly periodic statement after the purchase, and, as applicable, thereafter.  
Consumer testing conducted for the Board suggests that*

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<sup>30</sup> As mentioned, Card Protection Programs typically offer benefits in the event a spouse becomes involuntarily unemployed, and also offers many features beyond unemployment. Therefore, HSBC proposes a disclosure recognize that the enrollee's own ineligibility for coverage not be presumed to make the program unsuitable for that person.

*consumers review the transactions on their statements carefully. Moreover, as discussed in the section-by-section analysis under § 226.7, under the final rule fees, including insurance and debt cancellation or suspension coverage charges, will be better highlighted on statements.”<sup>31</sup>*

In describing the emphasized disclosure of Credit Protection Fees on the monthly statement, the Board noted “[t]he Board believes highlighting fees and interest for consumers will more effectively inform consumers of their costs of credit.”<sup>32</sup>

As Board consumer testing found that consumers review the monthly billing statement carefully, and see highlighted monthly *and annual* cost of Card Protection Programs, the proposed hypothetical cost disclosure offers little consumer benefit to counterbalance its impact to credit card issuers. These programs typically come with a refund period, and may be cancelled at any time a consumer elects to do so.

While HSBC believes these monthly cost disclosures are entirely sufficient to provide ongoing individualized cost information to consumers, we recognize that certain participants to the ICF Macro survey had difficulty calculating unit cost pricing based upon account balances. However, HSBC notes this appears to have resulted from a mathematical confusion, and not from a desire to know the hypothetical maximum expense of a credit insurance program under an open end lending arrangement.

To improve the understandability of unit cost programs, the Board should consider requiring a universal example, which neither exaggerates nor understates the cost of the Card Protection Program. The Board could accomplish this by selecting a value that would be pertinent to most types of credit card accounts, such as “The monthly cost of the product is \$.75 per \$100 of your ending balance. If your ending balance is \$500, your cost will be \$3.75 for that month.”

**C. The proposed disclosure for debt suspension programs is inaccurate for HSBC debt suspension programs.**

The Board has proposed that card issuers who offer debt suspension benefits disclose that: “Your balance will actually increase during the suspension period as interest continues to accumulate.” This is not an accurate statement as to debt suspension programs offered by HSBC, and likely, not accurate as to many banks who offer debt suspension benefits. Under HSBC debt suspension programs, interest, fees and payments are suspended completely during a

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<sup>31</sup> 74 FR 5268

<sup>32</sup> 74 FR 5325

benefit period. HSBC recommends that the Board only require a disclosure of this type when applicable.

**D. The Board should not mandate that the customer's signature be located on the disclosure form.**

Unlike HELOC loans, which are typically completed using multiple documents, opening a credit card typically requires completing a single application. Currently, card issuers offer Credit Protection Programs on the credit application, where it is clearly indicated as optional, along with reference to disclosures contained on the reverse side of the application.

Although the Board's Model Form G-16(A) contains a signature block, the Proposed Rule does not actually require a signature block. Section 226.4(d)(3)(iii) of the Proposed Rule requires only that "disclosures" under 226.4(d)(1)(i) be displayed as shown on Model Form G-16(A). Additionally, Section 226.4(d)(1)(i)(F) does not indicate an intent for the signature to be on Form G-16(A). HSBC requests that the Board clarify that the check box and signature fields shown on Model Form G-16(A) are only examples and do not signify in any way that the signature block is required.

**E. Requiring two indications of election to enroll is confusing, will result in foreseeable error, and could result in consumer complaint following denied claims.**

The Proposed Rule would require both a check-box<sup>33</sup> indication and an enrollee signature.<sup>34</sup> It appears that the Board believes that two election indications will ensure that the enrollment was voluntary and intended. However, a two-step enrollment process will likely lead to consumer confusion and mistakes. There will be many cardholders who intend to enroll but unfortunately fail to complete the two-step enrollment process, preventing HSBC from enrolling such individuals. Later, when a covered event giving rise to program benefits occurs, the consumer expecting to receive benefits thinking she successfully enrolled will, in fact, not receive the expected benefits because she did not complete the 2 step process. This will undoubtedly lead to customer complaints or even initiate litigation. To avoid these risks, a card issuer may need to call or write its customer to clarify enrollment intent, repeat regulatory disclosures, and formalize a purchase election. However, this would create additional costs to the card issuer, and cause inconvenience to its cardholder. HSBC urges the Board to continue allowing enrollment to be indicated by signature alone, accompanied by a clear message such "By signing here, I have read the terms and am electing to enroll."

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<sup>33</sup> 226.4(d)(i)(E)

<sup>34</sup> 226.4(d)(i)(F)



**F. The Proposed Rule provides insufficient detail as to a Board website, and does not suggest a mechanism to meet survey participant expectations.**

The Proposed Rule would require a card issuer to display a message “Go to (Web site of the Federal Reserve Board) to learn more about this product.”<sup>35</sup> In explaining this requirement, the Board noted only that, “most (surveyed participants) indicated that they would use the Federal Reserve Board Web site to learn more about eligibility requirements.”<sup>36</sup>

While the intent of the Board website reference is clear, the Proposed Rule has not suggested how to accomplish the objective. As surveyed participants expect to see additional eligibility requirements specific to the program being offered,<sup>37</sup> the Board would presumably need to have that information, on a product-by-product basis, from every institution subject to a final rule. Most importantly, that information must be expeditiously available to the consumer, who may be relying on this information to make a pending purchasing decision.

As an initial matter, HSBC is confused as to the need for the Board to insert itself into the delivery of detailed product information to HSBC customers. It seems highly unusual for a bank customer to be referred to a banking regulator for details as to a bank’s own product. By appearance, the customer must visit a Board website to get the *full* disclosure of a product, implicitly because it is unavailable from the bank itself. If the Board believes a customer should have access to internet disclosures detailing program eligibility requirements, it should simply require that card issuers provide their own website where this information is readily accessible.

Nevertheless, if the Board remains inclined to redirect a bank’s customer to a Board website for program-specific eligibility disclosures, it should propose a specific mechanism for it to obtain that information from banks. HSBC would be highly concerned with directing a cardholder to sift through all creditors, and all of their programs, for details of a specific HSBC program. HSBC often issues an affinity or retail brand credit card, which would add confusion finding Card Protection Program terms sorted by issuing bank name. In addition, understanding that a card issuer must have the ability to change the terms of its program, this methodology of providing program details via a Board website must contemplate a way to maintain accuracy of information contained there.

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<sup>35</sup> 226.4(d)(i)(C)

<sup>36</sup> 75 FR 58556

<sup>37</sup> “ICF Macro Report, page 16

## **VI. Conclusion**

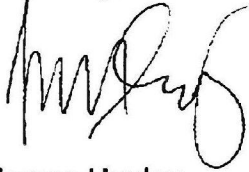
In summary, HSBC supports the Board's efforts in pursuing meaningful and informative consumer disclosures related to Card Protection Programs. As these programs are secondary to HSBC's primary lending relationship with its cardholder, it shares the Board's interest in ensuring that Card Protection Programs are understood by its cardholders, and enable informed purchase decisions. However, we are concerned the ICF Macro testing of credit insurance programs did not provide sufficient findings to support proposed disclosures for Card Protection Programs. Moreover, the methodology of the ICF Macro survey seemed intent upon delivering general warnings which dissuade all consumers, rather than seeking targeted disclosures which would better inform those who need additional information.

HSBC hopes the Board will reconsider including Card Protection Programs within purview of what was to be a HELOC rulemaking. Because the features of Card Protection Programs differ from credit insurance, HSBC believes more thorough and targeted testing should be conducted in order to identify any specific areas of consumer confusion. If the Board determines those specified areas of confusion can be remediated through improved disclosures, the Board should work collaboratively with other federal banking regulators to establish uniform, rather than duplicative or contradicting, federal disclosure standard for Card Protection Programs. In addition, a government study focusing on Card Protection Programs is expected to be published in the near future, which may alleviate certain Board concerns, and which may offer suggestions in addressing areas of identified concerns.

Finally, HSBC hopes the Board will ~~give~~ reconsider certain proposed disclosure requirements which would be highly burdensome for credit card issuers, and which could cause unintended impact to consumers by effectively eliminating the product through regulation. There should be a way to deliver meaningful information to consumers, which does not require credit card issuers to gather data unneeded to administer the underlying credit card account, require delivery of individualized hypothetical cost disclosures, or require multiple enrollment elections which are certain to lead to unnecessary confusion and dispute. HSBC believes consumers generally understand the nature of the program to cover unanticipated unemployment, and that more targeted disclosure might alleviate confusion in this area. Consumers already receive emphasized and ongoing monthly cost disclosures, and a singular and clear enrollment indication should be sufficient.

Once again, HSBC appreciates the opportunity to provide its comments on the Proposed Rule. Please do not hesitate to contact James Hanley at (952) 564-7600 in connection with this comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'James Hanley', written in a cursive style.

James Hanley  
Senior Counsel